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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,413	02/17/2004	Toby Curtis Moore	MOORE FOOT	3064
45498	7590	06/28/2006	EXAMINER	
RISTO A. RINNE, JR. COMPLETE PATENTING SERVICES 2173 EAST FRANCISCO BOULEVARD, SUITE E SAN RAFAEL, CA 94901			GRAHAM, GARY K	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,413

Applicant(s)

MOORE, TOBY CURTIS

Examiner

Gary K. Graham

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 15-18 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14 is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 13 is/are rejected.
- 7) ☒ Claim(s) 10 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election of Group I, claims 1-14 in the reply filed on 17 April 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Salvadore (US patent 2,503,174).

The patent to Salvadore discloses the invention, a foot cleaning device (fig . ,3), as is claimed. Salvadore discloses a container (11) with a plurality of holes (15) therein for drainage of water from the container. Abrasive means or sponge (17) is provided in the container for contacting and scrubbing the feet of a user.

Claims 1-4 are rejected under 35 U.S.C. 102(a) as being anticipated by Kelly (US patent application publication 2003/0204927).

The publication to Kelly discloses the invention, a foot cleaning device (figs. 2,3), as is claimed. Kelly discloses a container defined by base (4) with a plurality of holes (9) in a bottom thereof for drainage of water from the container. Abrasive means, including bristles (8) and abrasive particulates such as sand in region (2) are provided in the container for contacting and scrubbing the feet of a user.

Claims 1, 2, 6-9, 11 and 13 are rejected under 35 U.S.C. 102(a) as being anticipated by Wheeler et al (US patent 6,684,444).

The patent to Wheeler et al discloses the invention, a foot cleaning device (fig. 2), as is claimed. Wheeler discloses a container (20) with a plurality of holes (29) in a bottom thereof for drainage of water from the container. Abrasive means, including bristles (44) and abrasives such as pumice stone, **abrasive sponge** and loofah are provided in the container for contacting and scrubbing the feet of a user.

With respect to claim 7, Wheeler discloses that the bristles (44) of the various sections of the bristle module (40) having protrusions defined by the surface contour (fig.1). Therefore, when the bristles are replaced with abrasive sponge, as suggested by Wheeler, such sections will also have such protrusions. The abrasive sponge is a replacement for the bristle sections of the bristle module and will be shaped likewise, to ensure proper foot cleansing.

With respect to claims 8, 9, 11 and 13, note screen or lining (60) which is disposed over module (40), which can include the abrasive sponge. Means (64) are provided for detachably attaching the lining to the container.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (US patent application publication 2003/0204927).

The patent to Kelly discloses all of the above recited subject matter with the exception of the abrasive particulates including gravel.

While Kelly discloses that the abrasive particulates can include sand, silica, plastics and other hard materials, he does not disclose gravel. However, mere selection of a different particulate from that which is disclosed by Kelly does not appear inventive. Selection of a known abrasive particulate to make the abrasive region of Kelly, the selection being on the basis of suitability for the intended use would be obvious. It would have been obvious to one of skill in the art to employ gravel for the abrasive region of Kelly, as such is a known abrasive, to provide an inexpensive abrasive particulate.

Allowable Subject Matter

Claims 10 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 14 is allowed.

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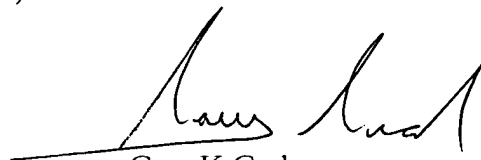
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Gary K. Graham', is written over a horizontal line.

Gary K Graham
Primary Examiner
Art Unit 1744

GKG
26 June 2006